

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1977

Supreme Court, U. S.

FILED

APR 19 1978

MICHAEL RODAK, JR., CLERK

No. 77-1315

JAMES F. LAWRENCE, ROBERT G. KNOTT,
MARTHA McLANAHAN, ELIZABETH B.
PARKINSON and 215 EAST 72nd STREET
CORPORATION,

Petitioners,

vs.

JOSEPH B. KLEIN, as Chairman, PHILIP P.
AGUSTA, as Vice Chairman, and HARRY
M. CARROLL, JOHN J. WALSH, JOHN B.
CINCOTTA, as Members of the Board
of Standards and Appeals of the City
of New York, SAMUEL LINDENBAUM, as
Applicant, 72nd STREET ASSOCIATES
and DAVID BERG,

Respondents.

BRIEF IN OPPOSITION TO CERTIORARI

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TASBLE OF CONTENTS

| | <u>Page</u> |
|-----------------|-------------|
| Statement..... | 1 |
| Conclusion..... | 4 |

Cases Cited

| | |
|--|---|
| <u>People ex rel Fordham Manor Ref.</u> <u>Church v. Walsh, 244 N.Y. 280,</u> <u>155 NE 575 (1927).....</u> | 3 |
| <u>Matter of Elliot v. Galvin, 33 N Y</u> <u>2d 594 (1973).....</u> | 3 |
| <u>Matter of N.Y.C. Housing Board v.</u> <u>Foley, 23 AD 2d 84, (1st Dept.,</u> <u>1965) aff'd 16 N Y 2d 1071 (1965)....</u> | 3 |

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BRIEF OF RESPONDENTS' MEMBERS OF
THE BOARD OF STANDARDS AND APPEALS
IN OPPOSITION TO CERTIORARI

Statement

(1)

This brief is submitted on behalf of
Respondents, members of the Board of

Standards and Appeals of The City of New York, in opposition to the petition for Certiorari. This case has been fully briefed by the respondents, Samuel Lindenbaum, 72nd Street Associates, and David Berg, and as their position coincides with the Board's, we adopt such brief as our own in opposition to the petition.

(2)

We note, additionally, that the Board of Standards and Appeals is confronted with a very large number of appeals annually - only a small fraction of which reach the courts for review. Under these circumstances, for the Board to prepare detailed findings in each case, as petitioners suggest, would cast an unwarranted burden on its ability to function properly.

Moreover, the New York Court of Appeals has consistently upheld the Board when its

return contains factual findings sufficient for intelligent review by the courts.

People ex rel Fordham Manor Reformed Church v. Walsh, 244 N.Y. 280 (1927); Matter of Elliot v. Galvin, 33 N Y 2d 594 (1973).

And, as the Special Term and Appellate Division here found the Board's grant of the variance fully supported by such facts, the question really comes down to the appropriateness of a "remand for the sole purpose of transposing the material in the return to a new formal decision." Matter of N.Y.C. Housing Board v. Foley, 23 AD 2d 84, 87 (1st Dept., 1965) aff'd 16 N Y 2d 1071 (1965). There, the Court said that such procedure "would serve no useful purpose."

Bypassing the untimeliness of the petition, warranting dismissal in the first instance, the contentions sought to be pre-

sented here are not worthy of review.

CONCLUSION

The petition should be denied.

April 11, 1978

Respectfully submitted

ALLEN G. SCHWARTZ,
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of New York,

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LEONARD OLARSCH,
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